

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

IN RE: RODNEY L. LINCOLN

PETITIONER,

**v.
JAY CASSADY, Superintendent,
Jefferson City Correctional Center,**

RESPONDENT.

DOCKET NUMBER WD79854

DATE: October 11, 2016

Appellate Judges:

Writ Division: Gary D. Witt, Presiding Judge, Cynthia L. Martin, Judge and Anthony Rex Gabbert, Judge

Attorneys:

Sean D. O'Brien and Tricia J. Bushnell, Kansas City, MO, for Petitioner.
Stephen D. Hawke and Michael J. Spillane, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Writ Division: Gary D. Witt, Presiding Judge, Cynthia L. Martin, Judge and Anthony Rex Gabbert, Judge

Rodney L. Lincoln has filed a petition for writ of habeas corpus requesting the vacation of his 1983 convictions of two counts of first-degree assault and of manslaughter. Relator asserts that newly discovered evidence clearly and convincingly establishes that he is actually innocent, a freestanding claim of actual innocence. Relator also claims that the preponderance of the evidence establishes either the gateway of actual innocence or of cause and prejudice, permitting review of procedurally barred claims that Relator was denied a constitutionally adequate trial.

Writ of Habeas Corpus Denied

1. Relator would be unable to sustain his burden to establish procedurally barred claims that he was denied a constitutionally adequate trial, rendering it unnecessary to determine whether Relator has sustained his burden to establish a gateway to review those claims.

2. Because the Missouri Supreme Court has not yet recognized a freestanding claim of actual innocence in cases where the death penalty has not been imposed, or based even in death penalty cases on principles of due process, we are not at liberty to expand Missouri habeas jurisprudence to permit consideration of the claim in this non-death penalty case.

Opinion by Cynthia L. Martin, Judge

October 11, 2016

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